

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES M. DAVIS,)	
)	Civil Action No. 2: 13-cv-1225
Plaintiff,)	
)	United States Senior District Judge
v.)	Terrence F. McVerry
)	
BRACKENRIDGE POLICE)	United States Magistrate Judge
DEPARTMENT,)	Cynthia Reed Eddy
)	
Defendant.)	

MEMORANDUM ORDER

On August 26, 2013, the above captioned case was initiated by the filing of a Motion for Leave to Proceed *in forma pauperis* (ECF No. 1) and was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court for Magistrate Judges. Plaintiff sought permission to proceed *in forma pauperis* to file a civil action against the Brackenridge Police Department pursuant to 42 U.S.C. § 1983.

By Order of August 28, 2013, the Motion to Proceed *in forma pauperis* was dismissed as Plaintiff had failed to sign and date his affidavit and had likewise failed to answer all questions on the Long Form as required by 28 U.S.C. § 1915(A)(1). Plaintiff was instructed that he could reopen the case by either submitting another motion to proceed *in forma pauperis* that was properly executed and all questions completed leaving no blanks or pay the full filing fee. (ECF No. 2).

On September 16, 2013, Plaintiff submitted a properly executed Motion to proceed *in forma pauperis* (ECF No. 3), which was granted by the Magistrate Judge on September 23, 2013, (ECF No. 4) and the Complaint was filed (ECF No. 5). However, pursuant to 28 U.S.C. § 1915,

the Magistrate Judge *sua sponte* dismissed the Complaint because, as explained in the Order, Brackenridge Police Department is not a “person” subject to suit under Section 1983. Plaintiff was granted leave to file an amended complaint on or before October 23, 2013. (ECF No. 4).

Plaintiff thereafter filed a timely Amended Complaint (ECF No. 8) again naming only the Brackenridge Police Department. Upon a screening review of the Amended Complaint, the Magistrate Judge found that the Amended Complaint suffered from the same deficiency as the original complaint. Accordingly, the Magistrate Judge filed a Report and Recommendation (ECF No. 10) recommending that the Amended Complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2) as the Amended Complaint fails to state a claim upon which relief can be granted.

Plaintiff was served with the Report and Recommendation at his listed address and was advised that he had until November 12, 2013, to file written objections to the Report and Recommendation. To date, no “objections” have been filed nor has any request for an extension of time in which to file objections been filed.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation and the Amended Complaint, the following order is entered:

AND NOW, this 21st day of November, 2013:

IT IS HEREBY ORDERED that this action is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 10) dated October 23, 2013, is **ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

BY THE COURT:

s/Terrence F. McVerry
Senior United States District Judge

cc: JAMES M. DAVIS
887 First Ave. #603
Brackenridge, PA 15014